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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/805,856
Filing Date: March 22, 2004
Appellant(s): FALAHEE, MARK H.

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2 December 2008 appealing from the Office action mailed 2 June 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,371,823	Petersen	3-1968
5,082,144	Sundstrom	1-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petersen (US Patent 3,371,823) in view of Sundstrom et al. (US Patent 5,082,144).

Claim 1: Petersen'823 teaches a device that contains a pair of opposing, rotating wheels (7, 7), a fillable reservoir (10), and a device to supply the glue (opening in the reservoir).

Petersen'823 does not teach that the fillable reservoir contains glue, however, it is old and well known to package glue in tubes, as taught by Sundstrom (column 5, lines 6-14). It would be obvious to one of ordinary skill in the art to use glue in the fillable reservoir to dispense glue in light of the teaching by Sundstrom.

Claim 2: The wheels include skin engaging features (see grooves in Figure 3).

Claim 4: Petersen'823 contains opposing manually operated buttons (23, or outer surface of wheels 7, 7).

(10) Response to Argument

Appellant argues that the opening in the tube would need to be pointed towards the wheels, not away from them, in order to supply glue to skin edges being brought together. This argument is not persuasive because the device of Petersen'823 can be oriented such that wheels are pulled along the skin and the opening in the tube trails behind the wheels to supply glue, or the Petersen'823 device can be oriented so that the wheels are pulled along the skin such that the opening in the tube is in front of the wheels to supply glue to an wound before the wheels pass over it. Further, it is to be noted that if the tube in the Petersen'823 reference were almost empty, the opening in the tube would be closer to, if not on top, of the wheels, as the back end (end of tube away from the opening that dispenses the glue or other material in the tube) of the tube is wound around the center spool 5 (as described in Petersen'823 column 2, lines 10-12). In addition, the claim states that the glue is applied to skin edges "being brought together." This does not require that the glue is applied to the skin edges directly within the wheels, since this language could refer to any portion of the skin edges forming the wound since the edges along the wound are all being brought together, albeit to different degrees depending on their distance and direction from the wheels.

Appellant argues that the glue taught by Petersen'823 in view of Sundstrom'144 does not teach skin glue, which Appellant states is a term in the art. However,

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Appellant's only mention of specific glues in the specification is on page 1, lines 10-11, in which Appellant states: "a (sic) adhesive *such as* Dermabond (super glue) is used." (emphasis added). This language does not require any specific type of glue but rather merely sets forth an exemplary type of adhesive.

Appellant argues that the invention of Petersen'823 does not teach manually opposing buttons because this is no additional structure. This argument is not persuasive because the outer faces of the wheels could be considered to constitute additional structure. For example, on a bike wheel, there is an outer surface, spokes and an inner hub; the spokes are a different structure than the outer surface. This is also true in the present case, in which the outer face of the wheel (20) is different than the outer circumference of the wheel (spiked area) and they represent two different structures.

The invention of Petersen'823 in view of Sundstrom'144 clearly reads on Appellant's claims because it contains everything listed: a pair of wheels (7, 7) that are fixed to inner spool (5). If the wheels and spool are fixed, they would still move in the same direction as one another and can still be pulled along a wound, as set forth in the claims of the instant application. The skin glue is provided by the combination of Petersen'823 in view of Sundstrom'144, in which Sundstrom'144 teaches that it is old and well known to provide glue in a tube, such as the tube used in the Petersen'823 invention. The "device to supply the glue" is the opening in the tube. It is used to supply the glue since it allows the glue to leave the tube, or it could be interpreted to be

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element 23 of Petersen'823 since element 23 is used to aid in pushing the contents of the tube out of the opening. Regarding Claim 3, grooves are clearly shown on the wheels in Figure 3 of Petersen'823. Regarding the "opposing manually operated buttons", the outer face of the wheel can serve as a manually operated button since the claim does not require any additional structure for these buttons.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Conferees:

/Lindsey Bachman/

Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734

/Thomas C. Barrett/

TQAS TC3700